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November 25, 1992

**BY HAND**

Melva J. Hayden, Esq.  
Assistant Regional Counsel  
New Jersey Superfund Branch  
United States Environmental  
Protection Agency - Region II  
Jacob Javits Federal Building  
New York, New York 10278

**RECEIVED**  
NOV 25 1992

Re: Carter Day Industries, Inc.

Dear Ms. Hayden:

Please accept our thanks for taking the time to meet on October 22, 1992 with representatives of Carter Day Industries, Inc. with reference to the Combe Fill landfill sites in New Jersey. The purpose of this letter is to briefly recapitulate the matters discussed at that meeting.

We remind you that Carter Day was successfully reorganized in a Chapter 11 proceeding, and was discharged in January of 1984. The only theoretical basis on which the EPA might make a claim against Carter Day would be the assertion of some residual interest in Combe Fill Corporation, a company itself liquidated in a Chapter 7 bankruptcy proceeding. It was Combe Fill Corporation which owned the New Jersey landfill sites and Carter Day disclaims any interest in Combe Fill. Despite these peculiar factual circumstances, and notwithstanding Carter Day's discharge in bankruptcy, the EPA has thus far been unwilling to recognize that Carter Day has no responsibility for remediation of the Combe Fill sites.

Recently, a number of developments have occurred which bear on Carter Day's situation and which we believe are dispositive. They are the following:

1. The State of New Jersey finally made a claim against Carter Day for payment with respect to the Combe Fill sites. Carter Day immediately instituted a proceeding in the United States Bankruptcy Court for the Southern District of New York

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seeking an order that it had been discharged of any remediation responsibility to the State of New Jersey, and the Bankruptcy Court agreed. The Bankruptcy Court order dated November 22, 1991 decreed that all claims of the New Jersey Department of Environmental Protection against Carter Day with respect to the Combe Fill sites have been discharged, and enjoined the NJDEP from taking any further action.

2. Recent court decisions appear to have established the principal that Carter Day is discharged from any liability to the EPA and, given present facts and circumstances, the matter of Carter Day's discharge is now ripe for determination. In In re Chateaugay Corporation, 944 F.2d 997, 1005 (2d Cir. 1991), the Second Circuit held that CERCLA response costs based upon a prepetition release or threatened release of hazardous substances were dischargeable in bankruptcy, regardless of when the costs were incurred. There is no dispute that the release of hazardous substances which took place at the Combe Fill sites occurred prior to Carter Day's bankruptcy filing. In Manville v. United States, 139 B.R. 97, 109 (S.D.N.Y. 1992), the District Court held that a Chapter 11 debtor's complaint seeking a judgment declaring that its CERCLA liability had been discharged was ripe for judicial review, even though the EPA had not initiated a judicial enforcement action against the debtor. In Manville, the District Court carefully distinguished the Second Circuit's decision in In re Combustion Equipment Associates, Inc., 838 F.2d 35 (2d Cir. 1988), noting the CERCLA activities had proceeded to a more advanced state than that at issue in Combustion Equipment, 139 B.R. at 106. Now, after the passage of more than four years, the CERCLA activities have rendered the EPA's purported claim ripe for adjudication. In fact, the clean-up at one of the sites is complete and the clean-up at the remaining site is significantly advanced. The advanced state of cleanup at the Combe Fill sites has eliminated the statutory conflict between CERCLA and the Bankruptcy Code, rendering the matter of Carter Day's discharge ripe. It is time for the EPA to decide whether it will make a claim or acknowledge that it has none.

3. On a more pragmatic level, the fortunes of Carter Day have continued to decline, both by reason of the poor economy in the agricultural industry and because of the disclosure in all of its financial statements of the contingent claim of the EPA. The latter has had a continuing chilling effect on the ability of Carter Day to properly finance itself or enter into any transaction which might enhance its prospects. We have already furnished to you its latest financial statements, which demonstrate graphically that even in the remote and

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unlikely event that the EPA was successful in asserting a claim, such victory would be pyrrhic in that it could not be collected. Indeed, all that could be accomplished would be to force what is left of Carter Day back into a bankruptcy proceeding.

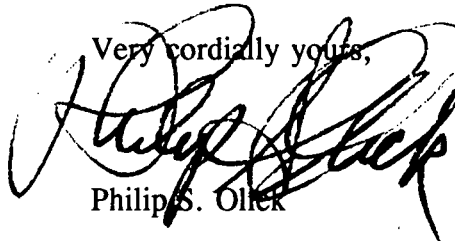
On behalf of our client, we most respectfully request that the EPA recognize what we believe to be the case, to wit, Carter Day has no liability in respect of the Combe Fill landfill sites. The removal of the cloud of potential EPA action will ensure that the approximately 100 persons who still work for Carter Day will continue to be gainfully employed and that Minnesota's economy will not be adversely impacted by the loss of yet another employer.

Failing that, the EPA should at least make a claim so that Carter Day will finally have its day in court.

We shall be available to discuss this matter with you further and to meet with you at your convenience.

Thank you again for your courtesy and cooperation.

Very cordially yours,

A handwritten signature in black ink, appearing to read "Philip S. Olick", written over the typed name.

Philip S. Olick

PSO:emr